

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
APPENDIX**

Docket No.

77-1025

B
P
S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Appellee

v.

NIKOLAS PANTELEAKIS,
a/k/a Nick Pontel

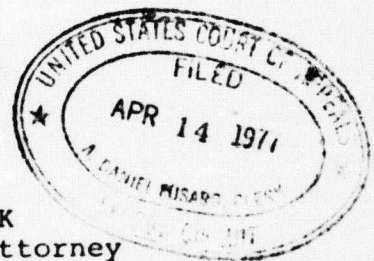
Appellant

Appeal from the United States District
Court for the District of Vermont

APPENDIX FOR THE UNITED STATES

GEORGE W.F. COOK
United States Attorney

JEROME F. O'NEILL
JILL A. JACOBSON
Assistant U.S. Attorneys
District of Vermont



PAGINATION AS IN ORIGINAL COPY

and that is a very rough outline of what we expect the Government's proof to show.

I hope I have given you some idea of what the evidence is so when you see and hear the witnesses take the stand you will know what the evidence is, and if it is not in keeping with what I said, fine. Keep in mind what the witnesses say. This will not be a particularly long case as the last case. The case won't take more than a couple of days at most. Thank you.

I believe that is all we have at this time, your Honor.

THE COURT. Mr. Cleveland, do you wish to make an opening statement on behalf of your client?

MR. CLEVELAND. Yes, if your Honor please.

Ladies and Gentlemen. I am Peter Cleveland. I guess we were introduced yesterday; some of you know me from the previous case.

We believe that the evidence will show that Mr. Panteleakis did, in fact, own the Maverick Restaurant. A number of people who will be testifying before you did, in fact, enter the Maverick Restaurant and were even involved in the environs of the Maverick Restaurant. There is no question or dispute about it.

We believe the evidence will show when all is said and done, and we ask you to pay close attention to the evi-

dence and what the witnesses will say, and the weight to be given their credibility, you should apply to what they say, and we believe when all is said and done, you will find there has been no agreement to conspire. That Mr. Panteleakis was there, no question about it, but that he did not agree and did not conspire to sell or transport in interstate commerce stolen securities. Thank you.

MR. O'NEILL. Your Honor, the first witness is Mr. Scott.

THE COURT. All right.

(The witness entered the courtroom.)

WILLIAM SCOTT, Sworn

DIRECT EXAMINATION

Q (By Mr. O'Neill) Can we have your name, sir?

A. William Scott.

Q Mr. Scott, where are you presently residing?

A. 7 Farrell Street, South Burlington.

Q Better known as the Chittenden Community Center?

A. Yes.

Q You are the same William Scott convicted in this court in April of 1976 on a charge of conspiracy to receive, possess, store, barter and sell and dispose of stolen securities valued in excess of \$5,000 which were transported in interstate commerce, conspiracy to transport those securities, and, thereafter, you were sentenced in

put stamp on the kids' hands. All times you got to watch what is going on, because if you do something wrong, the kids is not of age inside the restaurant and drinks liquor, or if the man behind the bar tending to drinks drinks liquor or something, or somebody drinks liquor on the discount side, they pull the license away. So, you have to watch the door, watch the bar, watch the police, watch the office. This used to be used as the liquor room, too. I always held the key to it, but this old fashioned locks, you can pick with a knife. So Larry and Scott find their way to have a knife in the case of the door and any time they want to go inside, they take a knife, pick the lock and go in. I be asked if I want to make a lot of money. I say "Make a lot of money. Everybody want to make a lot of money". I says "How". He says "Oh, we let you know". The first time they don't tell me anything. I guess they used this process to purchase a life-time deal, they used to call it. So Larry talked to me about it and Scott talked to me about it. They wanted me to provide five hundred dollars for them to buy the bonds. Of course, I told them I did not have five hundred dollars, and I says "What you talking about, what bond you talking about," the first time. So, Bill Scott, he open his coat pocket like this (indicating) and pull a piece of paper, and I can see one thousand dollar

in the top. Okay. Of course, up to that time I never see bond close. I see a lot of time bonds in the T.V. They say to save ten dollars out of your pay, buy a bond. So, I am not interested. Now, I see a lot of conversation, you know. They go in the office some times with John, the short guy; the French guy. Herman, his name is.

Q Kermit White?

A. Ya, I think that is the correct name. So, I knew exactly what all the Mickey Mouse talking is going on for; what the conversation was. So another day--I can't say what exact day it used to be--but late at night I see the three of them go to the office.

Q When you say "the three of them," who do you mean?

A. John, Bill and Larry. All right, they go to the office, so I got to go to see what is going on. Maybe they go inside, talk, drinking inside, maybe take cash out of the desk. So, I said "Watch, Strahan. Art, you know what they try to do?" He says "What". "They try to buy some bonds." He says "Don't tell me, I don't want to hear nothing". I say "Let's go, let's see what the hang is going on". So, we go inside and the bond, they are on the top of the desk.

Q One bond or several?

A. No. See, there is a brown envelope right here like

the one you get through the mail--the brown envelopes--and there is another bond here. I can't recall, I know the amount of the bond, so I pick up the bond. I say "Here, Art, you want to get rich," just joking with Art, okay? Art scared, he take off out of the office. So I follow him out of the office. The day after, after nine o'clock at night, nobody is supposed to go in the kitchen except the dish washer, the man that wash the plates and bring the beer to the bar. I saw Larry Thibeault, John Lavers, Bill Scott and another guy, Herman White go in the kitchen. So I says, I best see what the heck is going on. I go in the kitchen, the doors are open both sides. I can't see them clear. They be away from the back and I can see the brown envelope I see before on the desk change hands from Bill's to John Lavers. So I says, "You know you are not supposed to be here. Nobody is supposed to be here. This is not the place to do business, to start with". So Larry says, "Don't you worry, Pap, we'll cut you in". So I say something nice any way and left.

Q What did you say?

A. Well, I say "Well, bull shit," so I left. (I go outside; I never hear nothing from the bonds no more to that time they start arguing inside the place, they worry what happened to John Lavers. They ask me "John ever

call you, come to collect any money". He used to collect money for the meat company. I says "No," and I knew they afraid John Lavers take off with all the paperwork, just take off to the time we know John is being caught on the border with that bonds. Then everything come in the open. What happened? How I know he is picked up with the bonds? John's wife comes down looking for money; needs money to feed the kids; she has three or four little kids; used to drive one of these big busses. I met John's wife and John's kids; used to treat them in the store on the weekend. That is what I know.

Q Did you ever borrow money to attempt to buy any bonds?

A. No. I be offered, they drive me banana for two weeks to come up with money to invest in bonds, but I knew the difference between wrong and right, so I never done it.

Q Did you ever sell any bonds to anybody?

A. No.

Q Did you handle the bonds?

A. One time I hold one of them and say "Here, Art, get rich," and Art take out of the office, as a joke.

Q But you knew that they were doing something with the bonds?

A. You see, Mr. Cleveland, I own a restaurant. I supposed to keep my mouth closed, my eyes and ears open, if I want to stay in business. Any time I see something wrong in the place, pick up the phone, call the cops or

you find somebody is killed or I go out of business.

So I try to mind my own business. I stay away from other people's affairs if it has no effect on my business.

That happened, I knew what was going on there.

Q Did you, at any time, pay any money to anybody for the purchase of those bonds?

A. No.

Q Did you give any money to Bill Scott for the purchase of those bonds?

A. No. I hear all this testimony, what they say here. That is not true. I never give him nothing. I never be involved in anything, except I knew what is going on.

Q Now, subsequent to Christmas of 1974 in the early part of January, is that when William Scott was down south in Pennsylvania?

A. I think so.

Q And, at that time, Larry Thibeault requested you give him one thousand dollars and the keys and use of your car?

A. Yes, that is true.

Q Did he indicate anything to you why you should pay that money?

A. Well, it was obvious as black and white, if I didn't come up with the money, I go to jail.

Q For what purpose?

A. He knew everything about me. In Lowell, he knew they

MR. CLEVELAND. We renew our motion for judgment of acquittal made at the end of the Government's case, your Honor., under the same reasons stated on the record.

THE COURT. All right. We are going to deny that motion, and the Court, at this time, will take up the requests to charge. The defendant has filed no requests to charge. I take it you have none?

MR. CLEVELAND. As I indicated to you in chambers, the only request that I have, I am satisfied with what I understand to be the Court's charge on conspiracy in general, and the general charges which the Court gave in the last case, and I am under the understanding those would be very similar in this case.

THE COURT. Substantially the same.

MR. CLEVELAND. And, the only requests I specifically would like is that the Court does, in fact, charge that conspiracy cannot be found on the basis of knowledge alone.

THE COURT. The Court will so charge, and we will turn to the Government's requests. Request Number 1. We'll read the substance of the indictment to the jury. Request Number 2. We'll read the relevant parts of the statutes to the jury. Request Number 3. We'll charge the elements of the offense. Actually, we'll charge it in three parts, rather than four, but we'll cover the items requested by the Govern-

mony and make that judgment as to whether you think it is credible. You certainly have that province. That is totally your responsibility and you can consider the fact that he passed bad checks; absolutely can consider it. As to whether you believe it, I would submit to you you have to apply the same kind of tests and perhaps some different ones with the Government's witnesses involved.

Mr. O'Neill has already indicated to you that Scott, Lavers, Thibeault all were given some sort of a consideration, let's say, for their testimony. Does that in itself mean they are going to lie? No, I don't think so. It doesn't mean they are going to lie, but look at human nature. They know they have something to gain. Now I don't believe the Government ever said to any of those witnesses "You say this". I don't believe it, and I hope you don't believe it because I don't think our Government runs that way, but human nature, if I am Bill Scott and I know I have a two-year sentence ahead of me, and if I can testify and get only six months out of it, I am going to be helpful. Lavers is walking the street, and he admittedly carried the bonds to Canada with his fingerprints on them. The R.C.M.P. testified about that. There is no controverted evidence on that. He is out walking the street. Thibeault was really given the best deal of all-- nothing. "You testify for us, you walk free." Simple. Are they going to lie? I don't know if the Government told them

what to say. I am sure not, but human nature, when you get something, you get it.

We also heard some testimony about some other reasons that perhaps some of the Government witnesses weren't quite as active as they might have been. Now, did Larry Thibeault get something other than just walking the street. I think yes. Jerry O'Neill would like you to believe he would be. I believe his words in the examination of Nicky with relation to Thibeault, that when Thibeault was at the Carvella, why would he be trying to get you out? He would be cutting his own throat. I submit that is not true. Thibeault already knew and had already told Nicky upon many occasions in Brattleboro--this is in the same time period--he would rat on him on his bad checks in Lowell if he didn't do what he was supposed to do--come up with one thousand bucks and car to bail out Bill Scott. He knew he could push Nicky. He knew it when he was down at the Carvella. Maybe he didn't have all that much to gain, except somehow he got six new booths out of it; somehow Thibeault got fixtures from the Maverick Restaurant in his own restaurant; somehow he got fixtures from the Carvella in his own restaurant. I would say he has something to gain, and if that doesn't sound credible that he should be blackmailing Nicky about whether or not he should bail his friend Bill Scott out, finance one thousand bucks that he told Nicky he had better come up with to bail

Bill Scott out in Pennsylvania and use his car, if that doesn't sound credible, perhaps you should remember Art Strahan's testimony.

I asked him one question at the end; two questions. "Did Thibeault ever call you in regard to bail for Bill Scott? Yes. What was that conversation? Larry Thibeault said to me"--this is Art Strahan talking--"if you don't go bail me out," meaning Thibeault, "I am going to implicate you in this bond matter". He is a blackmailer, pure and simple. There is no other way to describe it, and he got what he wanted. He is walking the streets with no criminal charges and he has six nice new booths from the Maverick Restaurant, and if he can put Nicky awzy, he won't have to worry whether those fixtures can be taken away from him.

We had a discussion about the dinner club. I recall Mr. O'Neill's cross examination of Nicky. He indicated that it was sort of like a supper for two club. I believe there are such things. The Black Angus Restaurant around here had one a few years ago, but let me ask you something. Have you ever seen one where the money that you paid to get these free dinners went to somebody other than the restaurateur. Twenty dollars for twelve free dinners, but the restaurant gets the money, not two hot shot promoters get the money and leave the restaurant to have to deal with free dinners for the next year. So I don't think it is quite a supper for two club.